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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/028,666	12/28/2001	Emmett M. Flynn	9973-17	3650
1059	7590	05/05/2004	EXAMINER	
BERESKIN AND PARR SCOTIA PLAZA 40 KING STREET WEST-SUITE 4000 BOX 401 TORONTO, ON M5H 3Y2 CANADA			MADSEN, ROBERT A	
		ART UNIT	PAPER NUMBER	
		1761		
DATE MAILED: 05/05/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/028,666	FLYNN, EMMETT M
	Examiner Robert Madsen	Art Unit 1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 18 November 2003.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-10 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a)
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d)
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

1. The amendment filed November 18, 2003 has been entered. Claims 5-10 have been added. Claims 1-10 remain pending in the application.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1,3,4,6,8,9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Doyle (US 5171593) in view of Schecter (US 3079037).

4. Amended claim 1 differs from the previously addressed claim 1 with the new limitations of : (1) a container having a perimetrical extending top with a top mating surface and bottom mating surface and (2)a lid having a bottom mating surface shaped to interconnect with the top mating n surface of the container and a top surface having generally flat central portion sized to receive the bottom of the container. Therefore, it would to modify Doyle for the reason stated in the Office Action mailed July 18, 2003. It would have been further obvious to include the newly recited container and lid configuration since Schecter teaches a container with a perimetrical extending top (i.e. at upper portion of 13 near item 17) and a bottom surface (item 12), as well as a lid with a bottom mating surface to interconnect with the top of the container (i.e. the bottom is the portion of the underside of the lid below item 24) and a top surface (i.e. the portion of the exposed when the lid is positioned in the container) with a general flat center portion (surrounded by item 26) to receive the bottom of the container. Schecter

teaches this offers the advantage of providing a re-usable container subsequent to removing a flexible and transparent seal as well as a support for the container.

5. Regarding, claims 3 and 4 see the reasons stated in for the reasons stated in the Office Action mailed July 18, 2003.

6. Regarding claim 6, claim 6 differs from claim 1 only by the omission of "folding the sheet under the lid such at the portions overlap thereof, and is therefore rejected for the same reasons as stated in the rejection of claim 1 in the Office Action mailed July 18, 2003.

7. Regarding claim 8, Doyle teaches the open portions of the layers are sealed together (Figures 4 and 5 in light of Column 3, lines 3-26, 47-51).

8. Regarding claim 9, which shares the same limitation as claim 4, see the rejection of claim 4 stated in the Office Action mailed July 18, 2003.

9. Claims 2 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Doyle (US 5171593) in view of Schecter (US 3079037) as applied to claims 1, 3 ,4,6,8,9 above, further of Chum et al. (US 5685128).

10. Regarding claims 2 and 7, which share the same limitation, see the rejection of claim 2 stated in the Office Action mailed July 18, 2003.

Art Unit: 1761

11. Claims 5 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Doyle (US 5171593) in view of Schecter (US 3079037) as applied to claims 1, 3 ,4,6above, further of Wermond (US 5582317).

12. Regarding claims 5 and 10, modified Doyle includes a top mating surface of the container comprises a groove and the bottom mating surface of the lid comprises a ridge, but is silent in teaching the top of the container includes the ridge and the bottom of the lid includes the groove.

13. Wermond also teaches a food container with a re-useable lid that has a bottom that is inserted and secured to the top of the container utilizing a ridge/groove mechanism. However, Wermond teaches the lid has the groove and the container has the ridge (Abstract, Column 2, line 38 to column 3, line 20, note groove 46 and ridge 44 in Figures).

14. Therefore, to further modify Doyle such that the top of the container includes the ridge and the bottom of the lid includes the groove, would have been an obvious matter of design since Wermond teaches sealing a food container with a re-useable lid wherein the bottom of the lid is inserted into the top and is sealed to the container via a ridge/groove seal wherein the container includes the ridge and the lid includes the groove, and one clearly would have been substituting one conventional ridge/groove seal for another for the same purpose: sealing a food container with a re-useable lid wherein the bottom of the lid is inserted into the top and is sealed to the container via a ridge/groove seal.

Response to Arguments

15. Applicant's arguments filed November 18, 2003 have been fully considered but they are not persuasive. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Applicant has not addressed why one of ordinary skilled would not have been motivated to *modify* Doyle in view of Schecter, or even further in view of Chum et al. Doyle teaches placing produce in a container suitable for reuse . overwrapping the container with a flexible material sized to extend over the entire container, to allow for suitable display and gas flow from the container, wherein the sheet is folded, overlapped, and heat sealed under the container. Doyle differs from the recited claims in providing a lid secured the bottom of the container. Schecter also teaches a food container sealed with a flexible material for display, but teaches a container similar to Doyle has a problem: it does not provide a lid to close the container after removal of the flexible material. Schecter solves the problem by including the recited lid/container structure , which includes a lid for the container that is secured to the base of the container, wherein the consumer can place the lid on the top of the container after the flexible material has been removed. Thus, Schecter recognizes a problem with flexible transparent material applied to the opening of a food container, such as Doyle, (i.e. a re-usable lid is not provided) and teaches an advantageous

Art Unit: 1761

solution : securing a lid to the base of the container so that a lid can be applied to the container after initially opening the container.

Conclusion

16. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

17. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (571) 272-1402. The examiner can normally be reached on 7:00AM-3:30PM M-F.

19. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1761

20. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert Madsen
Examiner
Art Unit 1761

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